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DK

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/358,587	07/21/99	MOORE	F PF482

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ROCKVILLE MD 20850

HM22/0824

EXAMINER

FITZGERALD, D

ART UNIT	PAPER NUMBER
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1647

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DATE MAILED:

08/24/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/358,587

Applicant(s)

MOORE, et al.

Examiner
David L. FITZGERALD

Group Art Unit
1647



☐ Responsive to communication(s) filed on _____

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1035 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire ONE (1) month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-20 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☐ Claim(s) _____ is/are rejected.

☐ Claim(s) _____ is/are objected to.

☒ Claims 1-20 are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

1. Restriction to one of the following inventions is required under 35 U.S.C. § 121:

I. Claims 1-15 and 17-20, drawn to keratinocyte-derived interferon (KDI)-encoding nucleic acids (classified in Class 536/subclass 23.52), vectors (435/320.1), host cells (435/325+), recombinant methods (435/69.51), KDI proteins (530/351), compositions (424/85.4), and therapeutic methods (424/85.4).

II. Claim 16, drawn to an antibody specific for a KDI polypeptide (530/388.23).

The inventions are distinct, each from the other, for the following reasons.

The antibodies of group II are related to the proteins and, indirectly, to the nucleic acids of group I insofar as they will specifically recognize the proteins claimed or encoded by the claimed nucleic acids. These inventions are patentably distinct because the proteins, nucleic acids, and antibodies are discrete species, differing materially in structure and function. Neither the nucleic acids nor the proteins are required for the production of the antibodies as the latter may alternatively be generated by immunization against prior art polypeptides comprising identical subsequences, *e.g.*, IFN- ω . Furthermore, the antibodies may be used independently of the products of group I as claimed.

These inventions are distinct for the reasons given above and have acquired separate status in the art, as shown by their different classifications and because they would entail divergent searches of the research literature and consideration of unique issues of patentability. Restriction for examination purposes as indicated is accordingly proper.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(i).

2. Any inquiry concerning this communication should be directed to David Fitzgerald, who can be reached by any of the following means:

Telephone (703) 308-3934

Fax

All formal papers (703) 308-4242

Informal communications (703) 308-0294

e-mail (note PTO policies below) david.fitzgerald@uspto.gov

Inquiries of a general nature should be directed to the Technology Center 1600 receptionists at (703) 308-0196.



DAVID L. FITZGERALD
PRIMARY EXAMINER
ART UNIT 1647

21 August 2000

The **best time to reach Examiner Fitzgerald** is from 9 a.m. to 4 p.m. (Eastern). If he cannot take a call, a message may be left on his voicemail. Should attempts to reach him be unsuccessful, the supervisor for this Art Unit, Gary Kunz, may be reached at (703) 308-4623.

Most official papers and all informal **communications may be submitted to the PTO by fax**. For specific policies, refer to 37 C.F.R. § 1.6 and the notice published at 1096 O.G. 30. To facilitate their receipt and handling, please —

- ♦ Call the examiner when you send an urgent communication.
- ♦ **Do not send a duplicate copy** by mail or courier.

Any Internet e-mail **communications will be made of record in the application file**. PTO employees cannot engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. § 122. This policy is more fully set forth in the Interim Internet Usage Policy published in the PTO's *Official Gazette* on 25 February 1997 at 1195 O.G. 89.